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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re BRANDEN L., a Person Coming  
Under the Juvenile Court Law.

B260687

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

(Los Angeles County  
Super. Ct. No. DK06112)

Plaintiff and Respondent,

v.

STEPHANIE L.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Marguerite D. Downing, Judge. Affirmed.

Law Office of Lisa A. Raneri, Lisa A. Raneri, under appointment by the Court of Appeal, for Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, Tracy F. Dodds, Principal Deputy County Counsel, for Plaintiff and Respondent.

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Stephanie L. (mother) was 13 years old when she became pregnant with Branden L. by a then-unknown adult male while intoxicated, 14 when she gave birth, and 15 when she ran away from home—leaving the infant Branden with her father (maternal grandfather) and his wife and soon becoming pregnant again by a different unknown male. Mother has a history of illicit drug use and is on probation after the juvenile delinquency court found she had committed a burglary and vandalism. Four days after she left home, mother, who had no known means of support, demanded that maternal grandfather release Branden into her care, intending to reside with him at an undisclosed location with unnamed people.

The dependency court declared Branden a ward of the court and removed him from mother's custody after finding the child was at substantial risk of physical harm due to abandonment and mother's ongoing substance abuse issues. On appeal, mother challenges the jurisdictional findings and disposition, contending her prior drug use did not endanger Branden, she did not abandon him, and the disposition placement was not the least restrictive available.

We affirm.

### **BACKGROUND**

In June 2012, mother, age 13, was placed on probation after the juvenile delinquency court adjudicated that she had committed burglary and vandalism. As conditions of her probation, she was to reside with maternal grandfather, attend school, and submit to drug testing.

In February 2013, mother became pregnant while intoxicated, giving birth to Branden in September. Father, who was 19, was incarcerated for having sexual contact with a minor under 14 years old. In December 2013, mother and father agreed to participate in voluntary family maintenance services. Mother agreed to continue to comply with her probation orders, including participating in anger management and substance abuse counseling and attending school. Father agreed to participate in substance abuse counseling and submit to random drug testing. They also agreed to participate in family preservation services.

In April 2014, mother completed her probation-required programs, but her school attendance was inconsistent. Father failed to participate in substance abuse counseling or undergo random drug testing.

On June 3, 2014, Miriam V. reported to the department that mother had left home after a dispute over her curfew, leaving Branden in her and maternal grandfather's care. Four days after she left, mother called home, demanding to pick up Branden and move with him to an undisclosed location. Miriam V. refused to release Branden to her. At all times, Branden was well groomed and in good spirits while in the care of maternal grandfather and Miriam V., and they agreed to care for him.

On June 11, 2014, mother failed to appear for a juvenile probation hearing, and a warrant was issued for her arrest.

On June 12, 2014, maternal grandfather located mother living with a 21-year-old male in Long Beach, and brought her home. However, she left home again that night, again leaving Branden in maternal grandfather's care.

Children's Social Worker (CSW) Jimenez spoke with father's mother, M.G., who informed Jimenez that father had been living with her and stated she would be interested in caring for Branden in the event he was detained from both mother and father. Jimenez informed M.G. she could not be considered as a placement option for Branden as long as father lived in the same home. Father spoke with Jimenez and again agreed to participate in substance abuse classes and random drug testing. On June 20, 2014, the juvenile court authorized the Department of Children and Family Services (DCFS) to take Branden into protective custody. A week later, DCFS filed a petition pursuant to Welfare and Institutions Code section 300, subdivision (b) alleging Branden had been neglected by his parents.<sup>1</sup>

On August 6, 2014, DCFS filed a first amended petition. As ultimately sustained, DCFS alleged under count b-1 that mother had left Branden with maternal grandfather "without making a plan for the child's ongoing care and supervision," and "failed to

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<sup>1</sup> Unspecified statutory references are to the Welfare and Institutions Code.

comply with the terms of the Juvenile Delinquency Court Probation, resulting in an issuance of a bench warrant.” The petition alleged, “mother’s failure to make a plan for the child’s ongoing care and supervision[] endangers the child’s physical health and safety, and places the child at risk of physical harm and damage.” In count b-2, DCFS alleged father was a recent abuser of cocaine and marijuana, which sometimes interfered with his ability to care for Branden. In count b-3, DCFS alleged mother had a history of illicit drug abuse and was under the influence of marijuana both when she was pregnant with Branden and later, when Branden was in her care.

The court adjudicated the matter as to father that same day. (Mother had not been provided proper notice and was not present.) At the hearing, father stated he had caught mother smelling like marijuana a couple times and found a pipe in her bag when she was about three months pregnant. The court declared Branden a dependent under section 300, subdivision (b), and removed him from father, whom the court ordered to participate in family reunification services.

On September 5, 2014, mother appeared in court and denied the allegations of the first amended petition. She was granted monitored visitation with Branden.

On November 4, 2014, DCFS informed the court mother was back home with maternal grandfather after having turned herself in to the police and being placed under house arrest. She agreed to attend school and abide by her curfew because she wanted to reunify with Branden. She stated her relationship with maternal grandfather had improved because “he could see she was trying.” Mother stated she was now six months pregnant with a second child, but did not know the child’s father’s name. She informed a social worker she had used marijuana in the past but not since she realized she was pregnant with Branden, and completed a substance abuse program in March 2014.

At the jurisdiction hearing on the allegations against mother, the dependency court adjudicated the allegations against mother, she requested that the court dismiss counts b-1 and b-3 of the first amended petition, arguing she had not abandoned Branden, but had made appropriate plans for him by leaving him with maternal grandfather and Miriam V. Regarding count b-3, mother argued she had completed a full drug program with clean

drug tests and had not used marijuana or any drugs since learning she was pregnant with Branden. DCFS argued mother had not made appropriate plans for Branden when she left him with maternal grandfather and Miriam V. indefinitely, and had not cooperated with DCFS until recently.

The court sustained the petition, with some corrections. Regarding count b-3, the court found that “mother’s history and use of illicit drugs while Branden was in her care” put the child at risk of physical harm. The court removed Branden from mother, stating “The Department . . . is going to work with you and provide services to help you work your way back to Branden.” The court ordered she would have monitored visitation, gave DCFS discretion to liberalize visits, ordered family reunification services, and ordered mother to submit to five random drug tests and participate in individual counseling and parenting education.

On November 24, 2014, mother filed a notice of appeal.

On February 28, 2015, mother gave birth to her second child, Alexander, who was immediately detained. Mother subsequently pleaded no contest to a section 300 petition as to him.

## **DISCUSSION**

Mother contends the finding that she failed to protect Branden was unsupported by substantial evidence because Branden remained well cared for by maternal grandfather and Miriam V. She contends the finding that she used illicit drugs while Branden was in her care and that her history of substance abuse placed Branden in danger were unsupported by substantial evidence.

### **A. Mootness**

Preliminarily, DCFS argues we need not entertain mother’s appeal because the juvenile court correctly assumed jurisdiction based on the sustained allegation against father. Mother argues we should nevertheless address the jurisdictional findings as to her because they may prejudice her in future dependency proceedings.

“[A] jurisdictional finding good against one parent is good against both. More accurately, the minor is a dependent if the actions of either parent bring [him] within one

of the statutory definitions of a dependent. [Citations.] This accords with the purpose of a dependency proceeding, which is to protect the child, rather than prosecute the parent.” (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397; accord, *In re Alexis H.* (2005) 132 Cal.App.4th 11, 16.) An appellate court’s jurisdiction extends only to actual controversies for which it can grant relief. (*In re Christina A.* (2001) 91 Cal.App.4th 1153, 1158; *In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1315-1316.) “The question of mootness must be decided on a case-by-case basis. [Citation.] An issue is not moot if the purported error infects the outcome of subsequent proceedings.” (*In re Dylan T.* (1998) 65 Cal.App.4th 765, 769.)

Mother’s fear that the findings will impact her future is indeed speculative because a jurisdictional finding in any dependency proceeding must be based on current conditions, not a past finding. But DCFS routinely cites prior dependency findings in current reports, and did so here, giving some weight to mother’s claim that the current proceedings could have a future impact. We will therefore entertain her appeal. (*In re D.P.* (2014) 225 Cal.App.4th 898, 902; *In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763.)

## **B. Standard of Review**

At a jurisdictional hearing, a juvenile court must base its findings on a preponderance of the evidence. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1432.) “On appeal, the ‘substantial evidence’ test is the appropriate standard of review for both the jurisdictional and dispositional findings. [Citations.] The term ‘substantial evidence’ means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value.” (*Id.* at p. 1433.) “In making this determination, all conflicts are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.] In dependency proceedings, a trial court’s determination will not be disturbed unless it exceeds the bounds of reason.” (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564.)

**C. Section 300, subdivision (b)**

Mother contends insufficient evidence supports the finding that she failed to protect Branden when she temporarily abandoned him, as he remained well cared for by maternal grandfather and Miriam V. DCFS argues mother abandoned her child without arranging future plans for Branden's care, and the reason he was protected from harm was because maternal grandfather took care of him, not because mother, herself did.

A child comes within the jurisdiction of the juvenile court under subdivision (b) of section 300 if he or she "has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or by the willful or negligent failure of the . . . parent . . . to provide the child with adequate food, clothing, shelter, or medical treatment . . . ." (§ 300, subd. (b)(1).) DCFS has the burden to show specifically how the child has been harmed or might be harmed. (*In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318.) "While evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm." (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.) "Cases finding a substantial physical danger tend to fall into two factual patterns. One group involves an *identified, specific hazard* in the child's environment—typically an adult with a proven record of abusiveness. [Citations.] The second group involves children of such tender years that the absence of adequate supervision and care poses an inherent risk to their physical health and safety." (*Ibid.*)

Here, no evidence suggests Branden suffered or was likely to suffer any specific physical harm while in maternal grandfather's care. On the contrary, the only evidence was that he was well-groomed and in good spirits during that time. Further, the findings that mother used illicit drugs while caring for Branden and that her history of substance abuse placed Branden in danger were unsupported by any evidence.

DCFS argues mother's leaving home, failing to attend her probation hearing, failing to attend school, and living with an unknown male in Long Beach indicate she had abandoned her sobriety and returned to using marijuana. We disagree. Although mother

admitted to having used marijuana in the past, no evidence indicated she used it since learning she was pregnant with Branden. Although father stated he had caught her a couple of times smelling like marijuana, this was apparently when she was pregnant. The only evidence regarding current drug use was negative. According to a letter from Masada Homes, mother received drug counseling from November 29, 2012 to March 26, 2014, and tested negative on several occasions. (Mother presumably missed drug tests when she left home, a twofold violation of her delinquency probation, but no affirmative evidence of missed tests was adduced below.)

Although no evidence of any specific hazard was adduced, Branden was clearly of such tender years that the absence of adequate supervision and care posed an inherent risk to his physical health and safety. Mother abandoned him. She argues Branden was left in good hands, but that was lucky and none of her doing. Mother's plan, to the extent she had one, was not to leave Branden with maternal grandfather but to take him to an undisclosed location to live with an unnamed adult with whom she had a sexual relationship. The trial court could reasonably conclude it would be hazardous to the physical wellbeing of a baby to live in the unsupervised care of a very young mother with no known means of support who showed a propensity to commit crime, disobey court orders, avoid school, leave home to live in an undisclosed location with an unnamed adult, and refuse to cooperate with DCFS. It was therefore not only mother's leaving Branden with her father that constituted the neglect that endangered the child, but also the subsequent plan to take Branden with her.

We therefore affirm the jurisdictional finding.

#### **D. Disposition**

Mother contends no substantial evidence supported the court's implied finding that returning Branden to her custody posed a substantial risk of physical harm to Branden. She argues other reasonable alternatives exist to protect the child other than removing him from her custody.

"Under section 361, subdivision (c)(1) children may not be removed from their home 'unless the juvenile court finds clear and convincing evidence' of a substantial

danger to the children's physical health, safety, protection, or physical or emotional well-being 'and there are no reasonable means' for protecting the children other than removal from their home. The statute 'is clear and specific: Even though children may be dependents of the juvenile court, they shall not be removed from the home in which they are residing at the time of the petition unless there is clear and convincing evidence of a substantial danger to the child's physical health, safety, protection, or physical or emotional well-being *and* there are no "reasonable means" by which the child can be protected without removal.'" (*In re Ashly F.* (2014) 225 Cal.App.4th 803, 809.) "To aid the court in determining whether 'reasonable means' exist for protecting the children, short of removing them from their home, the California Rules of Court require DCFS to submit a social study which 'must include' among other things: 'A discussion of the reasonable efforts made to prevent or eliminate removal.' (Cal. Rules of Court, rule 5.690(a)(1)(B)(i).)" (*Id.* at p. 809.)

Here, the rationale supporting jurisdiction also justifies removal. Mother has shown herself to be highly unwise and immature in her decisionmaking with respect to the child, supposing he should go with her wherever she wishes to stay with whoever is abusing her, in derogation of court orders and with no known means of financial support. Mother suggests she could have been placed in a group home with Branden, but she did not ask for that below and no evidence suggests she wants to do that now. Under the circumstances, the juvenile court was within its discretion to conclude no reasonable alternative to removal exists.

**DISPOSITION**

We affirm the jurisdiction and disposition orders.

NOT TO BE PUBLISHED.

CHANEY, Acting P. J.

We concur:

JOHNSON, J.

MOOR, J.<sup>\*</sup>

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<sup>\*</sup> Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.